

September 29, 2000

MEMORANDUM FOR: V. Stephen Carberry, Chief Procurement Officer, N

FROM: James A. Heist, Director, Financial Audits Division, GAF

SUBJECT: Survey of HUD's Contract Award Process

We have completed a survey of HUD's contract award process with the focus on the two management and marketing contracts awarded in June 2000. The survey was a follow-up on issues relating to HUD's decision to award contracts to the In Town Management Group to perform services as a "management and marketing contractor." The survey reviewed the policies and procedures used by HUD to ensure awards are made to responsible contractors. The objective was to determine whether HUD should change the contracting process as a result of lessons learned from the In Town management and marketing contracts.

From our review of the preaward files for the management and marketing contracts awarded in June 2000, we concluded that HUD's Contracting Office had followed the procedures prescribed in the Federal Acquisition Regulations (FAR) as they relate to ensuring awards are made to responsible contractors. However, greater emphasis is needed on verifying past performance and improvements should be made in supporting the evaluations of the bid proposals. Also, procedures are needed to ensure the required provisions are added to all contracts where contractors have access to HUD's sensitive automated systems.

We summarized the Chief Procurement Officer's written comments to our draft audit related memorandum after each finding and included the complete text of the comments in Appendix A.

Although you accepted and agreed to implement our recommendations, please provide us a status report of corrective actions taken on each of those recommendations within 60 days. The status report should be prepared in accordance with Appendix 6 of HUD Handbook 2000.06 REV-3. Your response should identify the corrective action taken, or the proposed corrective action and the date to be completed, or why the action was considered unnecessary. Also, please give us copies of any correspondence or directives issued because of this review.

## RESULTS OF REVIEW

### **1. Additional Verification of Past Performance is Needed to Substantiate Contractor Qualifications**

The review of the preaward files for the June 2000 contracts showed that the number of references contacted to verify prospective contractors' past performance was limited. The past performance of the successful contractors was verified only to the extent of the contractors' performance on existing management and marketing contracts. Moreover, there was no verification of references apart from soliciting the views of HUD personnel. In addition, references were not verified for the lead partner of a successful bidder, although they were verified for the affiliated partner, a current management and marketing contractor. According to the contracting officer, attempts to contact references outside of HUD for the March 1999 contracts failed to provide meaningful information on past performance. The contracting officer indicated that outside sources did not want to disclose any performance information other than to say they would rehire the contractor. Another reason cited was the fact that information from internal sources on a contractor's successful past performance was deemed to be superior to information from outside of HUD.

A General Accounting Office report<sup>1</sup> issued in May of this year indicated that eleven of the thirteen current management and marketing contractors were rated as high risk in at least one or more of the performance dimensions such as property maintenance and security. The rating of high risk was an indication of the contractor's failure to adequately perform a required service under the contract. The FAR states that past failure to apply sufficient tenacity and perseverance to perform acceptably is strong evidence of nonresponsibility. We concluded that limiting the verification of past performance to the management and marketing contracts failed to provide sufficient meaningful information on the bidder's past performance. HUD should emphasize the need for meaningful information on a contractor's past performance, and consider alternative methods to obtain this information, such as having bidders provide signed confirmation letters that are sent to their references asking for information on the bidder's past performance.

#### **Office of the Chief Procurement Officer Response**

The Chief Procurement Officer stated that the process used and the information collected were appropriate and sufficient. However, he has indicated that he will initiate action to address the recommendation.

#### **Evaluation of the Office of the Chief Procurement Officer Response**

We disagree that the process and the information collected were sufficient. The process did not gather the most informative data available because it did not identify and address the inadequate performance cited by the General Accounting Office's report. At a minimum, the

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<sup>1</sup> The referenced report is titled *Stronger Measures Needed to Encourage Better Performance by Management and Marketing Contractors* report No. GAO/RCED-00-1117, issued May 2000.

issues of inadequate performance should have been addressed as part of the determination of the contractor's responsibility. If the inadequate performance was found to be an issue for the firms' evaluated, they should have been resolved to ensure that the firms would apply sufficient tenacity and perseverance to perform all tasks acceptably.

## **2. Changes Needed in Documenting Technical Evaluations**

A comparison of the technical evaluations for the proposals for the June 2000 contracts and the March 1999 contracts showed that HUD had improved in documenting the evaluations. However, our review of the technical evaluation reports for the new contracts showed that additional improvements were needed in documenting the assessments of the evaluation factors and sub-factors. We found that the technical evaluation reports did not clearly distinguish the qualitative differences in the relative strengths and weaknesses between and among competing proposals. Also, the documentation of the individual evaluations did not always assess the evaluation factors and sub-factors by documenting the relative strengths, deficiencies, significant weaknesses, and risks for the three most significant evaluation factors. For instance:

- One of the evaluation factors specifically required evidence of the bidder's management team's and staff's experience in providing deliverables the same or substantially the same as the primary services during the last three years. The successful bidder provided questionable support for the three years of management experience, but received the same rating score as a bidder who fully supported three years of management experience. Another bidder who also supported three years and had management and marketing contract experience was rated lower.
- To receive a high rating under the evaluation factor for past experience, there was to be evidence of successful performance of the same or similar work in a superior manner during the three years immediately prior to the solicitation. If the bidder did not have sufficient past performance history, a high rating could also be achieved if it was clear from the evidence submitted that the risk of nonperformance was virtually nonexistent. However, the technical evaluation report indicates that bidders received high scores based on eight to thirteen months of satisfactory performance on management and marketing contracts. There was no indication of whether the risk of nonperformance was considered to be virtually nonexistent.
- The evaluation factor for management capability and quality control requires evidence regarding the ability to execute the mechanics of the contract. This evidence includes a quality control plan that addresses key functions such as the quality and oversight of data into the Single Family Acquired Asset Management System (SAMS) for a high rating score. The technical evaluation panel gave all bidders high rating scores for this evaluation factor even though it was not clear whether the bidders plans addressed the quality and oversight of data entered into SAMS.

The FAR requires that the strengths, deficiencies, significant weaknesses and other aspects of the proposal significant to the evaluation be documented in the contract file. According to HUD's Procurement Policy and Procedures Directive 2210.3, technical evaluation reports are used to document the information required by the FAR, and should clearly describe the strengths and weaknesses of each proposal along with the qualitative differences between the proposals.

However, the final quality control review indicated that the technical evaluation report did not clearly describe the strengths and weaknesses of each proposal or describe the qualitative differences between the proposals. Specifically, the final quality control review stated that each significant primary service evaluated should be addressed for each bidder to show the technical evaluation panel's analysis of each of the services. The review indicated that the panel would need to better illustrate this analysis to support the panel's scores in the event of a bid protest.

### **Office of the Chief Procurement Officer Response**

The Chief Procurement Officer concurred with the recommendation and stated that they had been accomplishing this.

### **Evaluation of the Office of the Chief Procurement Officer Response**

We want to reiterate that our review of the technical evaluation reports revealed that the reports did not document all the information required by the FAR. Specifically, the reports did not always document the strengths, deficiencies, or significant weaknesses specific to the factors against which the proposals were evaluated, and in a manner that clearly supported the ratings assessed. Also, the descriptions provided did not allow a qualitative comparison of the differences between the proposals and the reports did not document this comparison.

## **3. Procedures for Identifying Contract Provisions Needed**

Our report on our attempt to audit HUD's fiscal year 1999 financial statements identified that security checks should be completed for access to HUD's sensitive automated systems. The management and marketing contractors need access to SAMS, a sensitive automated system. Considering the recommendation for security checks, HUD's Policy and Field Operations Division revised the HUD Acquisition Regulations (HUDAR). They added several new security provisions in the contract clause section of the HUDAR under 2452.239-70 -- *Background investigations for sensitive automated systems or applications*. The new provisions included background investigations of contractor's and subcontractor's personnel, security breach notification, nondisclosure of information, minimum security procedures, and termination of the contractor or subcontractors for a lack of compliance. This contract clause was to be added to a contract whenever contractors required access to one of HUD's sensitive automated systems to perform under the contract.

As a follow up, we checked the implementation of the recommendation, and looked at the new management and marketing contracts for the new security provisions, specifically, contract clause 2452.239-70. Although the new contracts required employee information for security checks, the contracts did not include the contract clause for the new security provisions. The contracting officer said that the program officials had not advised the contracting office that SAMS was a sensitive system.

## **Office of the Chief Procurement Officer Response**

The Chief Procurement Officer agreed with the results of our reviews and indicated that action was initiated to address this recommendation.

## **Evaluation of the Office of the Chief Procurement Officer Response**

We want to commend the corrective action to be initiated by the Chief Procurement Officer to ensure that the HUDAR 2452-239-70 is used whenever applicable, and to add this clause to the affected current contracts. However, we want to point out that current procedures did not ensure provisions were added to the marketing and management contracts where contractors require access to HUD's sensitive automated systems. To make a determination, the contracting staff should contact HUD's information technology personnel or have access to information that identifies HUD's sensitive systems, at a minimum.

## **Recommendations**

We recommend that the Office of Procurement and Contracts:

- 1a. Develop procedures to ensure that sufficient meaningful information is provided on a bidder's past performance from their references. Consider having the bidder provide signed confirmation letters to send to references who should then be asked to respond directly to the contracting officer.
- 2a. Require technical evaluation panels, when evaluating competitive proposals, to provide a meaningful comparison and discrimination between and among competing proposals, and to document the relative strengths, deficiencies, significant weaknesses, and risks of the factors and sub-factors.
- 3a. Develop procedures to ensure that required contract provisions are included in applicable contracts with regard to contractors' access to HUD's sensitive automated systems. Also, the Contracting Officer should add the contract clause in HUD's Acquisition Regulations (HUDAR), "2452.239-70 -- *Background investigations for sensitive automated systems or applications,*" to all future marketing and management contracts; and consider adding the contract clause to the current management and marketing contracts if feasible and when options to extend current contracts are exercised.

We appreciate the courtesies extended to us during this survey. Should you or your staff have any questions, please contact John Dvorak or me at (202) 708-0383.

### Appendices

A - Chief Procurement Officer Comments

B - Distribution List

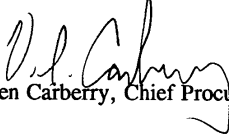


U. S. Department of Housing and Urban Development  
Washington, D.C. 20410

September 20, 2000

OFFICE OF THE CHIEF PROCUREMENT OFFICER

MEMORANDUM FOR: James A. Heist, Director of Financial Audits Division, GAF

FROM:  V. Stephen Carberry, Chief Procurement Officer, N

SUBJECT: Draft Report: Survey of HUD's Contract Award Process

In response to your memorandum of August 31, 2000, I have reviewed the subject draft report and provide the following comments.

- 1. Develop procedures to ensure that sufficient meaningful information is provided on a bidder's past performance from their references. Consider having the bidder provide signed confirmation letters to send to the references who should then be asked to respond directly to the contracting officer.*

In the immediate case, the Contracting Officer obtained the most informative data available concerning the prospective contractors' past performance, viz., evaluations by other HUD staff who had direct knowledge of the firms' performance under recent HUD contracts. These HUD contracts constituted the largest portion of the contractors' most recent performance history. Therefore, the process used and the information collected were appropriate and sufficient.

Given the increasing reluctance of private industry to report on the performance of business concerns, I am not convinced that the use of confirming letters will ensure any better results than we have had in obtaining past performance information on potential contractors. We can try this process to see if it yields additional information. Please be advised, however, that for many of our procurements, HUD is or has been the primary customer of many of the offerors.

In those cases where insufficient information is available from HUD or other Federal clients, we will certainly check any references available and as needed go back to the contractor and obtain a confirmation letter.

2. *Require technical evaluation panels, when evaluating competitive proposals, to provide a meaningful comparison and discrimination between and among competing proposals, and to document the relative strengths, deficiencies, significant weaknesses, and risks of the factors and subfactors.*

We concur with the recommendation and believe that we have been accomplishing this.

3. *Develop procedures to ensure that required contract provisions are included in applicable contracts with regard to contractor's access to HUD's sensitive automated systems.*

The failure to include the clause at HUDAR 2452.239-70, "*Background investigations for sensitive automated systems or applications,*" was an oversight on the part of contracting staff. This clause will be added to the affected contracts via formal contract modification. All HUD contracting activities use an automated contract writing system, ProDoc, which uses a question and answer protocol to assist in selecting required and applicable clauses. Nevertheless, contracting staff are ultimately responsible for ensuring that all required and applicable clauses are included in solicitation and contract documents.

I have advised all OCPO staff to ensure that the clause at HUDAR 2452.239-70 is used whenever applicable.

Thank you for this opportunity to comment on the draft report. Please let me know if I can provide any additional information.

**DISTRIBUTION**

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